UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X

IMELDA ALCIVAR, Civil Action No.:

Plaintiff,

-against- **COMPLAINT**

Plaintiff,

DEMAND FOR JURY TRIAL

ENHANCED RECOVERY COMPANY,

Defendant(s).
---X

Plaintiff, IMELDA ALCIVAR ("Plaintiff"), by and through her attorneys, M. Harvey Rephen & Associates, P.C. by Edward B. Geller, Esq., P.C., Of Counsel, as and for her Complaint against the Defendan), ENHANCED RECOVERY COMPANY, (hereinafter referred to as "Defendant(s)"), respectfully sets forth, complains

and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf for damages and declaratory and

injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the

United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA").

PARTIES

2. Plaintiff IMELDA ALCIVAR is a resident of the State of New York, residing at

445 445 Fountain Avenue, BROOKLYN, NY 11208.

3. Defendant Enhanced Recovery Company is a FLORIDA company engaged in the business of debt collecting with an address at 8014 BAYBERRY ROAD JACKSONVILLE, FL 32241.

4. Plaintiff is a "consumer" as the phrase is defined and used in the FDCPA under 15 USC §1692a (3).

5. The Defendant is a "debt collector" as the phrase is defined and used in the FDCPA under 15 USC §1692a (6).

JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 *et seq.* and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. §1367(a).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

8. Plaintiff repeats, reiterates and incorporates the allegations contained in

paragraphs numbered “1” through “7” herein with the same force and effect as if the same were set forth at length herein.

9. Upon information and belief, Defendant, on behalf of a third-party, began efforts to collect an alleged consumer debt from the Plaintiff.

10. Upon information and belief, and better known to the Defendant, the Defendant began its collection efforts and campaign of communications with the Plaintiff by reporting an account to national credit bureaus.

11. On or about March 2nd ,2017 the Plaintiff sought representation for credit assistance from Mrs. Frazier.

12. Mrs. Frazier called in on behalf of the Plaintiff and connected with a female representative who stated her name as “Ava” and gave her the Plaintiff’s social security number to access the account.

13. The representative gave her the balance on the account as $1,097.69 and the Plaintiff got on the phone to give her authorization to speak with Mrs. Frazier on her behalf.

14. Mrs. Frazier asked for the account number and if there were any interest or fees involved

being charged on the account.

15. The representative gave her the account number and said there were no additional charges.

16. Mrs. Frazier said the Plaintiff would like to dispute the account and asked if she do that over the phone or does it have to be done in writing.

17. The representative said she would mark the account as disputed but the Plaintiff still had to submit the dispute in writing along with documentation. Mrs. Frazier thanked her and the call was concluded.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

18. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "17" herein with the same force and effect as if the same were set forth at length herein.

19. 15 USC §1692 e (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

20. Defendants violated 15 USC §1692 e (8) on March 2nd, 2027 when the defendant's agent noted the dispute and failed to report it to the credit bureaus.

21. 15 USC §1692 e – preface and e (10) prohibits the use of any false, deceptive or misleading representations in connection with the collection of a debt.

22. Defendant violated 15 USC §1692 e – preface and e (10) on March 2nd, 2017 by noting verbal request for a dispute over the phone but then stating the Plaintiff must also submit that request in writing as well as send in supporting documentation. As Defendant knows, or should know, pursuant to Dana Clark v. Absolute Collection Service, Inc., the Fourth Circuit of the U.S. Court of Appeals found that subparagraph (3) of 15 USC §1692 g (a) of the FDCPA, as written, triggers statutory protections for consumers, affirming the right of consumers to challenge a debt orally without imposing a written requirement. The Court found further that, "Once a consumer disputes a debt orally, under section 1692 g (a)(3), a debt collector cannot communicate that consumer's credit information to others without disclosing the dispute."

23. 15 USC §1692 f – preface says that a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

24. Defendant violated 15 USC §1692 f – preface on March 2, 2017 when the Defendant's agent

unfairly stated that she would note the dispute then said that the plaintiff must send that dispute and documentation in writing .

25. As a result of Defendant's violations of the FDCPA, the Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

DEMAND FOR TRIAL BY JURY

26. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment from the Defendants as follows:

A. For actual damages provided and pursuant to 15 USC §1692k (a) (1);

B. For statutory damages provided and pursuant to 15 USC §1692(2)(A);

C. For statutory damages provided and pursuant to 15 USC§1692k(2)(B);

D. For attorneys' fees and costs provided and pursuant to15USC§1692(a)(3);

E. A declaration that the Defendant's practices violated the FDCPA;

F. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
April 16, 2017

Respectfully submitted,

By: ____________________

Edward B. Geller, Esq.
Edward B. Geller, Esq., P.C., Of Counsel to
M. HARVEY REPHEN & ASSOCIATES, P.C.
15 Landing Way
Bronx, New York 10464
Phone: (914)473-6783

Attorney for the Plaintiff IMELDA ALCIVAR

To: Enhanced Recovery Company
8014 BAYBERRY ROAD
JACKSONVILLE,FL 32241

(Via Prescribed Service)

Clerk,
United States District Court, Eastern District of New York

(For Filing Purposes)

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ERC,

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COMPLAINT

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Bronx, New York 10464
Phone: (914)473-6783

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By: ______________________

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